Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

October Term, 1998

STEPHANIE HART, et al.

Petitioners,

vs.

DANIEL GWADOSKY

Respondent.

On Petition for a Writ of Certiorari to the Maine Supreme Judicial Court

PETITION FOR A WRIT OF CERTIORARI

James T. Kilbreth
Counsel of Record
Christopher B. McLaughlin
VERRILL & DANA, LLP
Attorneys for Petitioner
One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

85 pp

QUESTIONS PRESENTED

I. Does the requirement that persons who circulate petitions in support of a citizen's initiative petition be registered to vote in the State of Maine unreasonably restrict the political speech of the petition's sponsors in violation of the First Amendment of the United States Constitution?

II. Does the requirement that persons who circulate petitions in support of a citizen's initiative petition be legal residents of the State of Maine unreasonably restrict the political speech of the petition's sponsors in violation of the First Amendment of the United States Constitution?

LIST OF PARTIES

Pursuant to Rule 14.1(b) of the Supreme Court Rules, the parties to the proceedings below whose judgment is sought to be reviewed are:

Stephanie Hart and Mainers for Medical Rights,
Plaintiffs/Petitioners

Daniel Gwadosky, in his capacity of Secretary of State for the State of Maine,
Defendant/Respondent

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Petitioners respectfully petition for a writ of certiorari to review the judgment of the Maine Supreme Judicial court entered in the above-entitled proceeding on July 28, 1998.

OPINIONS BELOW

The opinion of the Maine Supreme Judicial Court, dated July 28, 1998, is reported at 1998 Me. 189. A copy is reproduced as Appendix A. The unreported order and decision of the Maine Superior Court, Kennebec County (Kravchuk, J.), dated May 15, 1998, is reproduced as Appendix B. Justice Kravchuk's July 1, 1998, unreported order affirming her earlier order is reproduced as Appendix C.

STATEMENT OF JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. § 1257 and seek review of a

judgment of the Maine Supreme Judicial Court entered on July 28, 1998.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions implicated by this lawsuit are as follows:

First Amendment

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

42 U.S.C. § 1983

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an

> action at law, suit in equity or other proper proceeding for redress. For the purposes of this section an act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

21-A M.R.S.A. § 903-A

> Petitions issued under this chapter may be circulated by any registered voter.

Maine Constitution, Art. 4, § 20 (in part)

> . . . "circulator" means a person who solicits signatures for written petitions, and who must be a resident of this State and whose name must appear on the voting list of the city, town or plantation of the circulator's residence as qualified to vote for Governor.

Petitioners raised federal questions regarding the constitutionality of 21-A M.R.S.A. 903-A and the Maine Constitution, Art. 4, § 20 at the outset of the proceedings. The decisions of the Maine Superior Court (Appendices B and C) and the Maine Supreme Judicial Court (Appendix A) clearly refer

to the federal questions raised by Petitioners and demonstrate that the federal questions were timely and properly raised by Petitioners.

STATEMENT OF THE CASE

Petitioners Stephanie Hart and Mainers For Medical Rights ask the Court to strike down two state requirements that unconstitutionally limit the methods by which a Maine registered voter and Maine resident such as Ms. Hart may promote political speech and collect signatures in support of a citizen's initiative petition. Although the state may have a legitimate interest in allowing only Maine residents to sponsor legislation through the citizen's initiative process, the state cannot justify laws that prohibit a Maine voter from enlisting non-residents or non-voters to promote political discourse regarding proposed legislation through the

circulation of an initiative petition. This Court has struck down similar restrictions on political speech after applying strict scrutiny to the justifications offered by the different states. Two United States courts of appeals have struck down as unconstitutional voter registration requirements identical to those challenged by Petitioners.

The Secretary of State's arguments justifying the restrictions at issue ring particularly hollow in light of the absence of similar restrictions in analogous areas of the state legislative and electoral process. Maine does not prohibit non-residents or non-registered voters from working as lobbyists or from circulating nominating petitions for aspiring political candidates. If the state truly has a compelling interest in preventing non-residents or non-voters from participation in the legislative

process, then restrictions on non-residents and non-voters must be enforced across the board. Because they are not, the requirements that persons who circulate citizen's initiative petitions be both registered voters and residents cannot pass constitutional muster.

Petitioners do not argue that non-residents should be permitted to sponsor legislation that could become the law of the state. A resident and registered voter such as Ms. Hart, however, must be permitted to exercise her First Amendment right to spread her political message and garner support for her proposed legislation without unreasonable restrictions. The laws challenged by Petitioners must be struck down to protect the constitutional rights of all Maine voters who desire to sponsor legislation through the citizen's initiative process.

FACTUAL AND PROCEDURAL BACKGROUND

The facts of this matter are not in dispute. The right to submit proposed legislation to Maine voters through the use of a citizen's initiative petition is created by 21-A M.R.S.A. §§ 901 et seq. and the Maine Constitution, Article IV, Part Third, § 18. A sponsor must first submit the proposed legislation to the Secretary of State of Maine for review to determine that it conforms to certain drafting requirements. After approval by the Secretary of State, the sponsor must collect a certain number of signatures (ten percent of the votes cast in the most recent gubernatorial election) from Maine registered voters in order to qualify the petition for the ballot. Signatures collected in support of a citizen's initiative petition are reviewed first by the local registrars and then again by the

Secretary of State. Once the Secretary of State determines that the sponsor has submitted a sufficient number of valid signatures, the proposed legislation is submitted to the state legislature. If the state legislature declines to enact the proposed legislation in its unamended form, it is placed on the ballot in the next general election for approval by the electorate.

Beginning in late November of 1997, Petitioners organized a drive to collect and submit petitions to the Secretary of State of Maine Daniel Gwadosky (the "Secretary") containing numerous certified signatures in support of the citizen's initiative petition entitled, "AN ACT to Permit the Medical Use of Marijuana." The Secretary initially rejected the initiative petition on February 8, 1998, because Petitioner's failed to submit the required

number of signatures in support of their petition. In making his initial determination, the Secretary refused to consider over 3,200 signatures submitted by Petitioners to the City of Portland before the constitutional deadline but not certified by the City of Portland in a timely fashion. Petitioners were forced to obtain an injunction from the Kennebec County Superior Court ordering that the City of Portland certify immediately the 3,200 signatures and that the Secretary credit Petitioners with all of the signatures so certified by the City.

On March 31, 1998, the Secretary announced that Petitioners' citizen's initiative would not be forwarded to the Maine Legislature or placed on the November 1998 ballot because Petitioners failed to submit the required number of signatures, even counting the belatedly certified signatures. The

Secretary rejected 4,347 signatures submitted by Petitioners because these signatures were collected by persons not registered to vote in Maine. An additional 1,033 signatures were initially rejected because they were collected by persons who allegedly were not Maine residents. The number of signatures rejected on the basis of the circulators' residency was subsequently reduced to 347 signatures after the Superior Court required the Secretary to reopen his residency investigation. (See Secretary's Decision Dated March 31, 1998, Appendix to Briefs (submitted to Maine Supreme Judicial Court), Tab 2, p. 2). If these signatures had been accepted (or are accepted on some later date), Petitioners would (or will) have submitted a sufficient number of signatures to qualify their Citizen's Initiative Petition to be forwarded to the

Maine State Legislature and to be placed on the general ballot in either 1998 or 1999.

Pursuant to 21-A M.R.S.A. §905, Petitioners appealed the Secretary's decision to the Kennebec County Superior Court on April 7, 1998. In their appeal, Petitioners challenged the constitutionality of the requirements that persons who collect signatures in support of a citizen's initiative ("circulators") be Maine residents and registered voters. Petitioners also challenged the Secretary's factual decision that five of the circulators were not legal residents of the state. If Petitioners had prevailed on these challenges, they would have submitted enough valid signatures to qualify their initiative for the November 1998 ballot.[1]

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[1] Petitioners are aware that the Court will not have the opportunity to award relief to Petitioners prior to the November 1998 election. Petitioners' claims are not moot, however, for two reasons. First, if Petitioners were to prevail

After an evidentiary hearing before the Superior Court relating to the factual challenge regarding the residency status of five of the circulators, and subsequent briefing on Petitioners' constitutional challenges, the court issued an order, dated May 15, 1998, rejecting Petitioners' constitutional challenges to the residency and voter

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on either or both of their constitutional challenges, any signatures unconstitutionally rejected by the Secretary would become valid signatures and would either qualify Petitioners' citizen's initiative for the November 1999 ballot or reduce the number of additional signatures that they would need to collect to qualify for that ballot. Second, the First Amendment violations complained of by Petitioners fall squarely within the "capable of repetition but avoiding review" doctrine. As explained by the Court in Murphy v. Hunt, 455 U.S. 478, 482 (1982), a claim is not moot if there is a "reasonable expectation or a demonstrated probability that the same controversy will recur." Clearly that is the case with any challenge to Maine's citizen's initiative laws: by the time a particular challenge is resolved in court, the November elections will have already occurred and any relief will be too late to place the petition on the ballot. Lacking action by the Court, Petitioners will face the same First Amendment harm when they attempt to place their petition on the November 1999 ballot. See First National Bank of Boston v. Bellotti, 435 U.S. 765, 774 (1978)(applying "capable of repetition, but avoiding review" doctrine to corporation's constitutional challenge to statute prohibiting corporate expenditures relating to certain voter referenda).

registration requirements and remanding the residency determination for the five allegedly non-resident circulators back to the Secretary for additional investigation. (See Appendix B, Decision and Order of the Superior Court, Kennebec County, Dated May 15, 1998.) Petitioners abandoned their appeal of the factual decisions made by the Secretary regarding the residency status of the circulators following additional investigation into these questions by the Secretary.

Pursuant to 21-A M.R.S.A. §905, Petitioners appealed the order of the Kennebec County Superior Court to the Maine Supreme Judicial court, again challenging the constitutionality of the requirements that circulators be registered voters and legal residents of Maine. On July 28, 1998, the Maine Supreme Judicial Court rejected Petitioners'

constitutional challenges and affirmed the judgment entered below. (See Appendix A, Decision of the Maine Supreme Judicial Court, Dated July 28, 1998.)

REASONS FOR GRANTING THE WRIT

I. THE COURT BELOW'S DECISION UPHOLDING THE REQUIREMENT THAT PERSONS WHO CIRCULATE A CITIZEN'S INITIATIVE PETITION MUST BE REGISTERED VOTERS UNREASONABLY RESTRICTS THE "CORE POLITICAL SPEECH" OF THE PETITION'S SPONSORS AND CONFLICTS WITH THE DECISIONS OF TWO UNITED STATES COURTS OF APPEALS.

By affirming the judgment rendered below by the Superior Court, the Maine Supreme Judicial Court upheld the constitutionality of the requirement that persons who serve as circulators of a citizen's

initiative be Maine registered voters.[2] Identical requirements enforced by Nebraska and Colorado have been struck down as unconstitutional by the United States Courts of Appeals for the Eighth and Tenth Circuits, because such requirements unreasonably restrict the political speech of the petition's sponsors. See Bernbeck v. Moore, 126 F.3d 1114, 1116 (8th Cir. 1997)(applying strict scrutiny to strike down Nebraska registered-voter requirement on First Amendment grounds);

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[2] Although the Maine Supreme Judicial Court stated that it did not rule on Petitioners' voter registration challenge, its decision of July 28, 1998, affirmed the May 15, 1998, order and decision of the Maine Superior Court in all respects. See Appendix A. The Maine Supreme Judicial Court thereby affirmed the lower court's ruling that it was constitutional for the Secretary to reject the signatures of over 4,000 registered Maine voters that were collected by circulators who were not registered to vote in Maine. As discussed in Note 1, *supra*, the validity of these signatures will be crucial to Petitioner's effort to place their citizen's initiative petition on next year's ballot. Moreover, the invalidity of the Maine Supreme Judicial Court's ruling with respect to the residency requirement, demonstrated in Part II below, requires a review of this issue.

American Const. L. Foundation, Inc., et al. v. Meyer, et al., 120 F.3d 1092, 1100 (10th Cir. 1997), *cert. granted*, Buckley v. American Const. L. Foundation, Inc., 118 S. Ct. 1033 (1998), and *cert. denied*, American Const. L. Foundation, Inc. v. Buckley, 118 S. Ct. 1045 (1998)(applying strict scrutiny to strike down Colorado registered-voter requirement on First Amendment grounds).

The constitutional challenges raised by Petitioners in this petition are identical to those raised in American Const. L. Foundation, Inc. ("ACLF"), for which the Court has granted certiorari to review the decision of the Court of Appeals for the Tenth Circuit. Petitioners respectfully request that their petition for certiorari be granted so that Petitioners' constitutional challenges may be resolved by the Court

concurrently with the constitutional challenges raised in the Tenth Circuit case.

Both the Eighth and Tenth Circuits struck down registered-voter requirements to protect the First Amendment right of the sponsor of a citizen's initiative petition to garner support for and promote political discussion about his or her proposed legislation. Bernbeck and ACLF rely on a unanimous 1988 opinion of this Court, Meyer v. Grant, 486 U.S. 414 (1988), which held that restrictions on the method of distributing citizen's initiative petitions must satisfy "strict scrutiny" to pass constitutional muster. Meyer explicitly stated that the right to circulate citizen's initiative petitions and encourage and participate in related political discussion is a right "at the core of our electoral process and of the First Amendment freedoms, an

area of public policy where protection of robust political discussion is at its zenith." Meyer, 486 U.S. at 425 (citations omitted).

Although Meyer dealt with a statute that prohibited the payment of circulators, both Bernbeck and ACLF involved constitutional challenges to statutes that were identical to the Maine statutory and constitutional provisions challenged by Petitioners. As the Court of Appeals for the Eighth Circuit observed,

> The concerns raised by the prohibition of paid circulators in Meyer are identical to the effect of the voter-registration requirement on the initiative process in the present case. In both instances, the laws "limit the number of voices who will convey the appellees message and the hours they can speak and, therefore, limit the size of the audience they can reach." Moreover, the laws at issue in both Meyer and the present case "make it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus

> limiting their ability to make the matter the focus of statewide discussion" . . . The effect, therefore, of these [voter-registration] statutes is a restriction of the people's constitutional right to express core political speech.

Bernbeck, 126 F.3d at 116 (citations omitted). Similarly, the Court of Appeals for the Tenth Circuit concluded that "exacting scrutiny" is the appropriate level of review for a First Amendment equal protection analysis of regulations limiting the number of eligible circulators. ACLF, 120 F.3d at 1100.

As in Meyer, Bernbeck and ACLF, the State cannot demonstrate that the circulator restrictions at issue are narrowly tailored to support a compelling government interest. The primary compelling interest identified by the Secretary to support the circulator restrictions challenged by Petitioners is the need for the State "to restrict participation in the

process of self-government to members of its own political community." Brief of Appellee to the Maine Supreme Judicial Court, p. 9. Petitioners concede that the State has a compelling interest in limiting the ability to sponsor legislation, either as a member of the state legislature or through the citizen's initiative process, to state residents. But the State cannot demonstrate any compelling interest in limiting the number of voices permitted to convey a sponsor's message by preventing him or her from enlisting non-registered voters to circulate petitions and promote political discourse.

Moreover, the state's asserted compelling interest -- "to restrict participation in the process of self-government to members of its own political community" -- applies with equal force to lobbying activities and to the election of legislators, yet no

comparable restrictions are imposed in those areas. If Ms. Hart chose to lobby directly the State legislature to pass a bill permitting the medical use of marijuana, Ms. Hart would be free to hire as many non-voters to lobby the legislature as she could afford. See 3 M.R.S.A. §311 et seq. (creating reporting requirements for lobbyists but no residency or voter registration requirements). If Ms. Hart desired to run for the state legislature or to support a particular candidate in order to sponsor a bill permitting the medical use of marijuana, she would be free to hire non-voters to circulate the required nominating petitions. See 21-A M.R.S.A. §§335, 354 (creating no residency or voter registration requirements for the circulation of nominating petitions). It is only when Ms. Hart chooses to rely on the citizen's initiative process that the State limits

the voices who may convey her message to registered voters. The state's failure to impose the challenged restrictions in comparable areas of political activity demonstrates a clear lack of the compelling state interest necessary for the restrictions to survive strict scrutiny.[3]

The additional state interest allegedly related to the requirement of voter registration -- preventing fraud and preserving the integrity of the electoral process -- is adequately protected by other statutes that criminalize fraudulent activity related to the citizen's initiative process and by individual review

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[3] The state cannot discriminate against persons who choose to express themselves politically through the use of the citizen's initiative process. The inconsistent application of the restrictions challenged by Petitioners raises concerns that the state favors other methods of political expression, perhaps because of the content of some of the citizen's initiatives sponsored in Maine in recent years. Similar First Amendment "content" concerns were raised by Petitioners in their successful court effort in February of 1998 to force the City of Portland to comply with its constitutional mandate to certify petition signatures in a timely fashion.

of signatures by municipalities and by the Secretary. Maine enforces and publicizes criminal laws similar to those identified in Meyer that deal expressly with the danger that circulators might falsify petition signatures or knowingly permit petition signatories to commit fraud. See 21-A M.R.S.A. §904 (1)-(4)(criminalizing false statements by circulators as to the validity of petition signatures and the false acknowledgment by a notary of a circulator's oath). As the Supreme Court observed in Meyer, "These provisions seem adequate to the task of minimizing the risk of improper conduct in the circulation of a petition." Meyer, 486 U.S. at 427. Moreover, the Maine constitution requires that every signature submitted in support of an initiative be verified by the registrar of voters for the locality in which the

signatory resides.[4] In Bernbeck, the Court of Appeals for the Eighth Circuit concluded that a similar signature-by-signature verification process, when combined with the other protections discussed above, constituted "an adequate arsenal of safeguards to protect against the danger of signature fraud, and, accordingly, we conclude that the requirement of voter registration is not narrowly-tailored to serve the State's compelling interest." 126 F.3d at 1117. Finally, if the Secretary is not convinced of the authenticity of a particular signature, he has the authority to reject a signature unilaterally without the need to locate and question the circulator who obtained the signature. Several

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[4] Me. Const. Art. 4, Pt. 3, §20 requires that "written petitions for a direct initiative pursuant to Article IV, Part Third, Section 18 must be submitted to the appropriate officials of cities, towns or plantations for determination of whether the petitioners are qualified voters . . . "

signatures submitted by Petitioners were, in fact, rejected by the Secretary in this fashion. (See Secretary's Decision Dated March 31, 1998, Appendix to Briefs (submitted to Maine Supreme Judicial Court), Tab 2, p. 2). The ability of the Secretary to reject any potentially fraudulent signature without questioning circulators makes clear that the registered voter requirement is not necessary to prevent fraud.

As in Nebraska and Colorado, the state cannot justify the unreasonable restrictions on Ms. Hart's speech caused by the requirement that all circulators be registered voters. Accordingly, the Court should grant certiorari and overturn the decision of the Maine Supreme Judicial Court.

II. THE REQUIREMENT THAT PERSONS WHO CIRCULATE CITIZEN'S INITIATIVE PETITIONS BE LEGAL RESIDENTS OF THE STATE OF MAINE UNCONSTITUTIONALLY RESTRICTS THE SPONSOR'S POLITICAL SPEECH.

For similar reasons, the prohibition against the circulation of citizen's initiative petitions by non-residents also unreasonably restricts petitioner's First Amendment right to promote political speech regarding proposed legislation. The Secretary rejected the signatures from over 1,000 Maine registered voters because the signatures were collected by five circulators who initially were determined by the Secretary not to be legal residents of the state of Maine. (See Secretary's Decision Dated March 31, 1998, Appendix to Briefs (submitted to Maine Supreme Judicial Court), Tab 2, p. 2). A court-ordered follow-up investigation by the Secretary led him to conclude that two of these

circulators who had collected over 680 signatures were, in fact, Maine residents. (See Secretary's Revised Decision Dated June 23, 1998, Appendix to Briefs (submitted to Maine Supreme Judicial Court), Tab 4, p. 31). The Secretary's Revised Decision affirmed his earlier rejection of the 347 signatures collected by the other three circulators in question, based on the residency requirement for circulators.

The reasoning discussed in Meyer, Bernbeck, and ACLF applies with equal force to a residency requirement for circulators and renders such a requirement unconstitutional. As with the voter-registration requirement, the state's need to limit the ability to sponsor legislation to its own residents cannot justify a requirement that persons who circulate a citizen's initiative petition be Maine residents. In no other aspect of the legislative

process does the state enforce similar restrictions on political speech. The same arguments that demonstrate the unconstitutionality of the voter-registration requirement also demonstrate the unconstitutionality of the residency requirement.

Although this specific residency requirement has not been reviewed by the Court, a United States district court implicitly rejected circulator residency under the strict scrutiny standard of review. In Term Limits Leadership, Inc. v. Clark, 984 F. Supp. 470, 475 (S.D. Miss. 1997), the court struck down a registered voter requirement for circulators in part because the state could not demonstrate "actual fraud or threat to citizen's confidence in government posed by out-of-state circulators." (emphasis added) As with the voter registration requirement, the Secretary has made no showing that non-resident

circulators present a greater threat to the integrity of the legislative process than do resident circulators, much less a showing that the requirement furthers a compelling state interest.

The residency requirement is intimately related to the voter registration requirement that has been challenged by Petitioners and that is the subject of a writ to be reviewed by the Court this term. Petitioners respectfully suggest that the residency requirement for circulators at issue in this petition is of equal national importance as are the voter registration requirement and other restrictions at issue in the ACLF appeal. Accordingly, Petitioners request that the Court grant certiorari and overturn the decision of the Maine Supreme Judicial Court upholding the constitutionality of a residency requirement for circulators.

CONCLUSION

Requiring circulators of a citizen's initiative petition to be Maine residents and registered voters unreasonably restricts the First Amendment right of a petition's sponsors to engage in political discussion regarding the proposed legislation. The Court has recognized the importance of these issues in the writ of certiorari recently granted for a case involving restrictions identical to one set of requirements challenged by Petitioners. Petitioner's respectfully request that the Court grant a writ of certiorari to review the decision of the Maine Supreme Judicial Court.

Respectfully submitted,
James T. Kilbreth
Counsel of Record
Christopher B. McLaughlin
VERRILL & DANA, LLP
Attorneys for Petitioners
One Portland Square
P.O. Box 586
Portland, ME 04112-0586
(207) 774-4000

APPENDIX A - OPINION OF THE MAINE SUPREME JUDICIAL COURT, DATED JULY 28, 1998

MAINE SUPREME JUDICIAL COURT
Reporter of Decisions
Decision: 1998 ME 189
Docket: Ken-98-280
Argued: July 20, 1998
Decided: July 28, 1998

Panel: WATHEN, C.J., and ROBERTS, CLIFFORD, RUDMAN. and SAUFLEY, JJ.

STEPHANIE HART
and
MAINERS FOR MEDICAL RIGHTS

v.

SECRETARY OF STATE

WATHEN, C.J.

1. Stephanie Hart and Mainers for Medical Rights (the proponents) challenge the constitutionality of a provision of the Maine

Constitution. They appeal from a judgment entered in the Superior Court (Kennebec County, Kravchuk, C.J.) affirming the decisions of the Secretary of State rejecting a direct initiative petition. On appeal, they argue that the Secretary of State, by invalidating signatures on the basis that the circulators failed to comply with the constitutional requirements of residency and voter registration, violated their right to free speech protected by the first and fourteenth amendments of the United States Constitution. Because the number of signatures invalidated on the basis of the circulators' residence alone would prevent the initiative from being placed on the November 1998 ballot, we affirm the judgment without ruling on the voter registration requirement.

2. The relevant facts may be briefly summarized as follows: On October 24, 1997, Stephanie Hart applied for approval of a direct initiative petition entitled "An Act to Permit the Medical Use of Marijuana." The Secretary of State approved the form of the petition for circulation on November 21, 1997, and the proponents had three years to circulate and gather the 51,131 signatures (10% of votes cast in last gubernatorial election) required to place the initiative on the ballot. See 21-A M.R.S.A. § 903-A(1) (Supp. 1997). The proponents submitted petitions with a combined total of 68,330 signatures. The Secretary of State reviewed the petitions and invalidated a total of 22,507 signatures, leaving the proponents with 5,308 signatures less than the number required.

3. The proponents filed a complaint in the Superior Court seeking a review of the Secretary of State's decision pursuant to 21-A M.R.S.A. § 905 (1993 & Supp. 1997) and M.R. Civ. P. 80C. They challenged the Secretary of State's action in invalidating 1,033 signatures because the circulators were not residents of the State of Maine and 4,347 signatures because the circulators did not meet voter registration requirements.

4. Without the benefit of the guidance provided by our recent decision in Palesky v. Secretary of State, 1998 ME 103, ____ A.2d ____, the court held two evidentiary hearings in April of 1998. After our decision in Palesky , the court found the challenged provisions constitutional and affirmed the Secretary of State's determination concerning the 4,347 signatures collected by

unregistered voters. With respect to the 1,033 signatures collected by alleged nonresident circulators, the court vacated and remanded to the Secretary of State for further factual findings.

5. After remand, the Secretary of State issued an amended determination reducing the number of signatures invalidated on the basis of the circulators' residence from 1,033 to 347. The Superior Court affirmed and the proponents, still short by a total of 4,622 signatures, appealed. Because the signatures invalidated on the basis of the circulators' residence leaves proponents short of the required minimum, we address only that issue.

6. Proponents argue that Article IV, pt. 3, § 20 of the Maine Constitution (Supp. 1997) requiring circulators to be residents violates their fundamental rights to freedom of speech, freedom of

expression and freedom of association afforded by the first and fourteenth amendments to the United States Constitution.[1] The Secretary of State argues that the requirement represents reasonable regulation of the electoral process. We agree.

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[1] The first amendment provides in part:

> Congress shall make no law ... abridging the freedom of speech ... or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. I

The fourteenth amendment provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. amend. MV, § 1.

7. The direct initiative process, the exercise of the legislative power by the electors, is authorized by the Maine Constitution in the following terms: "The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the State Constitution, by written petition addressed to the Legislature or to either branch thereof and filed in the office of the Secretary of State . . ." Me. Const. art. IV, pt. 3, § 18 (Supp. 1997) (emphasis added). "Written petition" is defined as:

> one or more petitions written or printed, or partly written and partly printed, with the original signatures of the petitioners attached, verified as to the authenticity of the signatures by the oath of the circulator that all of the signatures to the petition were made in the presence of the circulator and that to the best of the circulatory knowledge and belief each signature is the signature of the person

> whose name it purports to be, and accompanied by the certificate of the official authorized by law to maintain the voting list of the city, town or plantation in which the petitioners reside that their names appear on the voting list of the city, town or plantation of the official as qualified to vote for Governor.

Me. Const. art. IV, pt. 3, § 20 (Supp. 1997) (emphasis added). "Circulator" is defined as "a person who solicits signatures for written petitions, and who must be a resident of this State and whose name must appear on the voting list of the city, town or plantation of the circulator's residence as qualified to vote for Governor." Me. Const. art. IV, pt. 3, § 20 (Supp. 1997) (emphasis added).

8. The proponents rely heavily on Meyer v. Grant, 486 U.S. 414, 108 S. Ct. 1886 (1988) and American Const. Law Found., Inc. v. Meyer, 120 F.3d 1092 (10th Cir. 1997), cert. granted sub nom.

Buckley v. American Const. Law Found., Inc., 118 S. Ct. 1033 (Feb. 23, 1998), and cert. denied, 118 S. Ct. 1045 (Feb. 23, 1998). In Meyer v. Grant, the United States Supreme Court declared unconstitutional a provision in Colorado's citizen initiative statute making it a criminal offense to pay circulators. 486 U.S. at 428. The Colorado statute also required circulators to be registered voters, but the constitutionality of that provision was not before the court and therefore was not addressed. In American Const. Law Found., Inc. v. Meyer, the 10th Circuit, following the United States Supreme Court's analysis, found, inter alia, that the Colorado statute requiring circulators to be registered voters was unconstitutional. Although this issue is presently before the United States Supreme Court, it has not yet been decided.

9. The proponents argue that, although neither Meyer v. Grant nor American Const. is controlling, the same strict scrutiny applies and the Secretary of State has not demonstrated a compelling state interest to justify the requirement of residence. We have acknowledged that, in general, '[t]he initiative petition process involves political discourse that is protected by the first amendment of the federal constitution." Wyman v. Secretary of State, 625 A.2d 307, 311 (Me. 1993) (citing Meyer v. Grant, 486 U.S. 414, 421, 108 S.Ct. 1886, 1891 (1988)). Specifically, "[t]he circulation of an initiative petition of necessity involves both the expression of a desire of political change and a discussion of the merits of the proposed change. . . . Thus the circulation of a petition involves the type of interactive communication concerning political

change that is appropriately described as 'core political speech.'" Id. (quoting Meyer v. Grant, 486 U.S. at 421-22). "Although the right to invoke an initiative is a state-created right, it does not follow that the state is free to impose limitations on that right without satisfying the dictates of the first amendment." Id. (citing Meyer v. Grant, 486 U.S. at 425). We find, however, that the requirement does not impose the same burden on political expression; and, further, that the State has demonstrated a compelling state interest in pressing the integrity of the law-making process and that the provision is narrowly tailored to serve that interest.

10. Contrary to the proponents' argument, the restriction in Meyer is distinguishable from the restriction in this case. Meyer involved a state statute making paid circulation a criminal offense.

Thus, the proponents were forced to rely on volunteer circulators and were prohibited from making any contribution to their expenses. The Supreme Court found that the proponents' political expression was restricted in two ways:

> First, it limits the number of voices who will convey [proponents'] message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that [proponents] will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

Meyer, 486 U.S. at 422-23 (footnotes omitted).

11. In this case, the requirement is that a circulator be a Maine resident. Although technically any restriction limits the "number of voices who will convey the [proponents'] message," Meyer, 486 U.S. at 422, it does not follow that requiring circulators to be residents will limit the size of the audience the

proponents can reach or will make it less likely that proponents "will garner the number of signatures necessary to place the matter on the ballot." Meyer, 486 U.S. at 423.

12. In Meyer, the petitioners had only six months to gather the necessary signatures and they demonstrated a need to pay circulators in order to obtain the necessary signatures within the allotted time. Here, the petitioners had three years to gather the necessary signatures (21-A M.R.S.A. § 903-A (Supp. 1997)) and failed to demonstrate any necessity for employing nonresidents in circulating the petitions.

13. We find persuasive the State's justification for the residency requirement in the citizens' law-making process. Residence enhances the integrity of the initiative process by ensuring that

citizens initiatives are brought by citizens of Maine. Because the circulators are the persons who verify that the signature and residence of petitioners are accurate, the residency requirement provides the State with jurisdiction over the circulators and makes the circulators easier to locate if there is a question as to the validity of the signatures collected. Thus, any interference with proponents' right to unfettered political expression is justified by the State's compelling state interest in protecting the integrity of the initiative process, and the residency requirement set forth in the Maine Constitution is narrowly tailored to serve that interest.

The entry is:

Judgment affirmed.

Attorneys for plaintiffs:

Christopher B. McLaughlin, Esq., (orally)
James T. Kilbreth, Esq.
William C. Knowles, Esq.
Verrill & Dana, LLP
P 0 Box 586
Portland, ME 04112-0586

Attorneys for defendant:

Andrew Ketterer, Attorney General
Andrew Hagler, Asst. Atty. Gen., (orally)
Phyllis Gardiner, Asst. Atty. Gen.
6 State House Station
Augusta, ME 04333-0006

APPENDIX B - ORDER OF THE KENNEBEC COUNTY SUPERIOR COURT, DATED MAY 15, 1998

STATE OF MAINE	SUPERIOR COURT
KENNEBEC, ss.	DOCKET NO. AP-98-30

STEPHANIE HART and MAINERS FOR MEDICAL RIGHTS,	)	
Plaintiffs	)	
v.	)	ORDER
DANIEL A. GWADOSKY, in his capacity as Secretary of State for the State of Maine,	)	
Defendant	)	

This matter is before the Court on Petitioners' M. R. Civ. P. 80C appeal from Respondent's finding that they had failed to gather a sufficient number of valid signatures to place initiated legislation permitting the medical use of marijuana on the ballot

in 1998. This appeal is brought pursuant to 21-A M.R.S.A. 905(2).

Petitioners challenge on federal grounds the constitutionality of Maine's constitutional requirements that circulators of citizens' initiative petitions be residents and registered voters of this State. They also contend that the Secretary of State erred factually in finding five of the circulators to be nonresidents. A total of 5,380 signatures were invalidated on the basis that the circulators were not residents and/or registered voters. Of that number 4,347 signatures were invalidated either because the circulators collected signatures prior to becoming registered to vote in the State of Maine or because the circulators were not registered to vote at all in the State of Maine. The remaining 1,033 contested signatures were invalidated because the circulators

were not residents of the State of Maine. Petitioners need to regain validation of these signatures in order to have their question placed on the ballot in November 1998.

I. RESIDENCY REQUIREMENT

This Court will first consider the issue of whether Maine's residency requirement is constitutional under the free speech guarantees of the First and Fourteenth Amendments of the U.S. Constitution.

Several U.S. Supreme Court and federal court cases have dealt with issues concerning eligibility restrictions on circulators of citizens' initiative petitions. The U.S. Supreme Court has held that the communication engaged in by circulators is "core political speech," and that the importance of First Amendment protections is "at its zenith" with regard

to this speech. Meyer v. Grant, 486 U.S. 414, 421, 425 (1988). Because core political speech was implicated in Meyer, the Court held that the statutory limitation on circulators in that case was subject to strict scrutiny. Id. at 420. Under a strict scrutiny analysis, this Court must determine whether or not the burden placed on Petitioners' speech is narrowly tailored to a compelling state interest.[2]

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2 The constitutional analysis employed in the various cases concerning free speech challenges to restrictions on circulators and/or on election regulations appears to this Court to be inconsistent. As Petitioners have relied on cases utilizing different methods of analysis, this Court has found it difficult to discern a step-by-step process to follow and feels compelled to point out the discrepancies in the case law.

The Meyer Court did not address whether or not the extent to which a restriction burdens core political speech affects the level of scrutiny to be applied. The Court simply stated that the limitation in that case required strict scrutiny. This Court notes that, deriving a guideline from the facts in Meyer, limiting potential circulators to volunteers by prohibiting the payment of circulators translates into a substantial limitation on the ability of proponents of a measure to find circulators.

As will be pointed out later in this opinion, other courts have first measured the burden on speech in order

In Meyer, authority heavily relied upon by Petitioners, the state of Colorado statutorily prohibited the use of paid circulators. The Court found that the prohibition limited political speech in two ways:

> [f]irst it limits the number of voices who will convey appellees' message and the hours they can speak and, therefore, limits the size of the audience they can reach. Second, it makes it less likely that appellees will garner the number of signatures necessary to place the matter on the ballot, thus limiting their ability to make the matter the focus of statewide discussion.

Id. at 422. As is the present case, Colorado also required that circulators be registered voters. Id. at

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to determine if strict or less exacting scrutiny applies.

However, this Court would assume for purposes of comparing a residency requirement to no residency requirement as advocated by Petitioners, that the burden placed on speech by a residency requirement is at least as substantial as the burden in Meyer. Therefore, this Court will apply strict scrutiny in that it will require that Respondents prove that a compelling state interest exists.

417. No separate residency requirement was mentioned. The Meyer Court never reached the issues of voter registration or residency. Thus, the holding in Meyer provides no direct guidance with regard to the residency restriction being challenged in this case and whether such a requirement for circulators is narrowly tailored to a compelling state interest.

In addition, Respondents correctly point out that Petitioners have not cited any case law which holds that a residency requirement unconstitutionally restricts protected speech. In fact, one case relied on by Petitioners strongly suggests that a residency requirement would be constitutional. American Constitutional Law Foundation v. Meyer, 120 F.3d 1092, 1100 (10th Cir. 1997) (finding that the state's interest in ensuring that circulators are residents

could be more precisely achieved by imposing a residency requirement instead of a voter-registration requirement).

By definition a residency requirement restricts the number of potential circulators to the number of residents within the State. Cases which have rejected restrictions on circulators have consistently done so on the theory that the number of voices conveying the message would be limited and it would be less likely that the requisite number of signatures would be garnered. In essence, the only way a residency requirement can violate Petitioners' freedom of speech is if the potential group of circulators is the entire population of the planet. Then the number of voices conveying the message would be limited and it may be marginally less likely that the requisite number of signatures would be

garnered. However, if the state has a compelling interest in limiting participation in the referendum process to residents, then obviously a residency requirement places no unconstitutional burden on speech. Thus, the issue becomes whether residency for circulators is a compelling state interest sufficient to justify the imposition of a residency requirement in a State's constitution.

The Maine Constitution provides that, "the electors may propose to the Legislature for its consideration any bill . . . [and] any measure thus proposed by electors . . . shall be submitted to the electors." Art. 4. pt. 3, § 18. "Electors" means the electors of the State qualified to vote for governor. Id. at § 20. "Circulator" means a person who solicits signatures for written petitions, and who must be a resident of this State and whose name

must appear on the voting list of his town. Id. The Maine Constitution clearly intended to ensure that the direct initiative process was reserved for Maine residents. No other case offered by either party deals with a state's constitutionally mandated residency requirement.

Maine is not obligated to afford its citizens an initiative procedure. See Meyer, 486 U.S. at 420. Surely, by choosing to do so in our Constitution, the State is free to constitutionally limit participation in that process to its own citizens, thus "citizens' initiative." In the general area of election law the U.S. Supreme Court has "repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activities at the polls." Burdick v. Takushi, 504 U.S. 428, 119 L.Ed.2d 245, 112 S.Ct. 2059 (1992). It is

incomprehensible to imagine that states can be afforded wide latitude in regulating the election of their legislators and statewide officers, but they cannot impose a constitutional requirement that participants in "citizens' initiative" procedure be citizens of the state.

The 10th Circuit American Constitutional Law Foundation case, also relied upon heavily by Petitioners, noted that the "petition process is a ballot access vehicle, as well as an avenue for political expression. " 120 F.3d at 1097. The Circuit Court further noted that to read Meyer as prohibiting any regulated access to the ballot would conflict with the general rule that states have the power to regulate their elections. As previously stated, in Meyer the potential pool of circulators was limited to Colorado residents only by virtue of

having a voter-registration requirement. In American Constitutional Law Foundation, the court stated, "[e]ven if we assume the state's potentially compelling interest in preserving the integrity of its elections requires all circulators to be residents, a question we need not decide, the registration requirement is not narrowly tailored." 120 F.3d at 1100. The court acknowledged a potential compelling interest in residency based merely on Colorado's registration requirement. A much stronger argument supporting a compelling interest in residency is present in this case where a separate, **constitutional**, residency requirement exists.

Furthermore, the case at hand can be distinguished from Bernbeck v. Moore, 126 F.3d 1114, 1117 (8th Cir. 1997) (finding a voter-registration requirement was not narrowly tailored

and was unconstitutional), in which the court noted, "the Nebraska Constitution gives the right to circulate petitions to the 'people,' without any limitation on whether they are registered to vote or residents of Nebraska. . ." The court then acknowledged, as had the court in American Const., that **even assuming that residency was a compelling interest**, the registration requirement was not narrowly tailored. Id. Nebraska, unlike Maine, did not choose to limit participation to its own citizens.

Any state has a strong, often compelling, interest in preserving the integrity of its electoral system. American Const., 120 F.3d at 1099(citing Timmons v. Twin Cities Area New Party, 117 S.Ct. 1364, 1366 (1997)). By state constitutional provision the citizens' initiative has been made an

integral part of Maine's electoral system. The State's interest in preserving the integrity of its provided process of direct democracy for its own citizens is a compelling and fundamental state interest. Accordingly, this Court finds that requiring circulators to be residents of the State of Maine does not impermissibly burden Petitioners' freedom of speech.

II. VOTER-REGISTRATION REQUIREMENT

This Court must separately review the constitutional requirement that circulators be registered voters. At first glance, the case law suggests that registration requirements do impermissibly burden the protected speech at issue. However, the fact that residency has been determined above to be a compelling state interest, and the fact that the reason for the residency

requirement is to ensure that Maine residents are responsible for bringing an issue directly to the ballot, distinguish this case from others which have struck down registration requirements.

The burden the registration requirement places on Petitioners' protected speech must be determined in order to apply the proper level of scrutiny. In determining the validity of an election regulation, the Court in Timmons held:

> regulations imposing severe burdens must be narrowly tailored and advance a compelling state interest. Lesser burdens, however, trigger less exacting review, and a State's important regulatory interests will usually be enough to justify reasonable, nondiscriminatory restrictions.

117 S.Ct. at 1366. This standard of review was utilized in American Const. in reviewing the registration requirement for circulators.[3]

Petitioners' potential group of circulators is comprised of the residents of Maine according to the findings in Section I of this opinion. In American Const., the court relied on Colorado's acknowledgment that there were at least 400,000 qualified but unregistered voters in the state. Id. at 1100. Petitioners have not argued or presented any evidence that Maine's registration requirement severely limits or burdens the number of possible

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[3] This standard of review which was not articulated in Meyer, yet which was employed in American Const., demonstrates the perceived analytical difficulty referred to in footnote 1. This Court recognizes that Timmons deals with an election regulation and not a restriction on circulators. However, as this standard was employed by the Tenth Circuit in this context, and as Petitioners rely on the Tenth Circuit case, this Court finds that it is an applicable guideline for an analysis of this portion of the case.

circulators by demonstrating that there are a substantial number of unregistered residents. On the other hand, the State asserts that the estimated voting population in Maine is 934,105 based on the 1990 census. In November, 1996, 953,368 persons were registered to vote. The State explains that the number of registered voters exceeds the number of eligible voters because there is a delay in removing people who move or pass away from the voting rolls. [Respondent's Memorandum, p. 23]. There has been no showing that the registration requirement discriminates against a significant portion of Maine residents nor has there been any showing that the Maine voter registration requirement was an impediment to Petitioners' ability to obtain qualified circulators.

Without some showing that the number of unregistered Maine residents is substantial compared to the number of residents eligible to vote, and without some showing that Petitioners have been limited in their ability to obtain registered residents for purposes of circulating their petitions, this Court must find that the voter-registration requirement does not severely burden protected speech. In this crucial respect the record in this case significantly differs from the American Const. record. It follows that the registration requirement is a reasonable regulatory measure and passes the "less exacting" standard of scrutiny.

However, even if it is determined that strict scrutiny applies, this Court finds that the requirement is narrowly tailored to Maine's compelling interest of ensuring that circulators are

residents. The evidentiary portion of this case exemplifies the difficulty of determining one's residency based on a person's intent to remain in the state indefinitely. Registering to vote in the State of Maine is a very simple and inexpensive task that can be undertaken relatively quickly in the event that an unregistered resident desires to be a circulator. Due to the ease of registering to vote, the registration requirement does not unreasonably burden Petitioners' core political speech. As a narrowly tailored regulatory device, it provides the State with a quick and uniform procedure by which it can ascertain circulators' residence.

A registration requirement is much less prohibitive than the ban on paid circulators in

Meyer.[4] In addition, the arguments put forth by states advocating restrictions, in Meyer and in other federal court cases cited herein, regarding fraud and the policing of the petition process are not the compelling interests of the State in this case. Those voter registration restrictions were found not to be narrowly tailored because other methods of policing, such as criminal prosecution, were available.

The compelling interest in this case is ensuring that Maine residents will be responsible for bringing an issue to a citizens' referendum. Ensuring that a circulator is a resident is most easily accomplished by requiring that the resident be a registered voter. This Court cannot imagine how a democratic

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[4] Contrary to Petitioners' assertion that the Court in Meyer explicitly stated that **any** limitation on political expression is subject to strict scrutiny, the Court actually stated that "**this case,**" referring to the ban on paid circulators, involved a limitation subject to strict scrutiny. 486 U.S. at 420.

government could fashion a more narrowly tailored nor less intrusive requirement for determining residency. It ensures that, in the absence of fraud, all parties, the State, the proponents of the measure, and the potential circulators, know at the start of the process that the circulators have met the residency requirement.

III. FACTUAL DETERMINATIONS OF RESIDENCY

The Law Court has recently decided a question of first impression concerning the nature of the review in an action appealing the findings of the Secretary of State relating to the validity of petitions for the direct initiative of legislation. Palesky v. Secretary of State, 1998 ME 103 (May 8, 1998). As this decision was issued subsequent to the two hearings held in this case on April 15 and 24, 1998, this Court finds that it is bound by Palesky.

Accordingly, the agreement between the parties and approved by this Court under which factual determinations on residency would be issued following a hearing allowing new evidence will not control these proceedings.

Instead, Palesky requires this Court to act only in an appellate capacity. Pursuant to M. R. Civ. P. 8OC(e), Id. at 19, this Court is allowed to take additional evidence, which occurred at a hearing held on April 24, 1998. Although petitioners did not technically comply with M. R. Civ. P. 8OC(e), the agreement of the parties and the Court's initial belief that petitioners were entitled to a "trial" pursuant to 21-A M.R.S.A. § 905(2) (1993) excuses the procedural defect and allows this Court to consider the evidence for the purposes enumerated in 5 M.R.S.A. § 11006(1)(B) (1993). This Court finds

that the additional evidence adduced at the hearing is material to the issues presented in the petition for review, and that it could not have been presented or was erroneously disallowed in proceedings before the agency. 5 M.R.S.A. § 11006(1)(B).

Separate from Petitioners' request to present additional evidence, they also urge this Court to review the Secretary of State's decision based on the agency record. The Secretary of State's decision was based primarily on information received by a detective with the Investigations Division of the Department of the Attorney General, Richard Fairfield, Jr. In light of the inaccuracies in Mr. Fairfield's findings which surfaced at the evidentiary hearing,[5] this Court does not find it necessary to

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[5] The procedural predicament of the factual portion of this case evidences the extreme difficulty that determining residency without a voter registration

requirement would present to the Secretary of State if the requirement was struck down. For instance, the evidence presented by Petitioners at the hearing showed the inadequateness of the investigation relied on by the Secretary of State in uncovering the circulators' ties to Maine. Testimony of circulators and family members and/or friends of circulators is often necessary to make a fair and accurate determination of whether or not an individual intended to reside in Maine. Driver's licenses are not determinative of residency, and it would be discriminatory against non-licensed residents to determine residency by such means. Likewise, a state identification card is not indicative of residency because it can be obtained by an out-of-stater for purposes of purchasing alcohol. In addition, as the testimony of Rebecca Avrett demonstrated, the place where one receives mail is not always indicative of residency as people can have mail sent to another address. Ms. Avrett had most of her important papers sent to her father's address in another state for her convenience, yet she was not residing in that state.

In the absence of a voter registration requirement, having the details of one's life investigated and/or requiring proof of this nature to prove residency could be very burdensome to residents who desire to be circulators, to proponents of a measure who are trying to ensure that their circulators are qualified, as well as to the State of Maine. Registering to vote is a very simple process with no associated costs which simply entails that the resident complete a registration card. The card requires that the registrant provide the minimum amount of personal information identified in attached Exhibit A. Petitioners cannot legitimately contend that requiring residents to register to vote places the type of restrictions on obtaining circulators that the ban on paying circulates

reach a decision on this issue. More appropriately, this matter is remanded for modifications of the Secretary of State's findings in accordance with the additional evidence presented.[6]

Based on the foregoing, entry will be:

The decision of the Secretary of State invalidating 4,347 signatures collected by unregistered voters is **AFFIRMED**. The decision of the Secretary of State invalidating 1,033 signatures because the

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did in Meyer.

[6] This Court notes that no evidence surfaced at the hearing that any of the five circulators came to Maine for the purpose of circulating petitions. Yet, Mr. Fairfield's affidavit purports this to be the case where it states that "at least five circulators had no ties to the State of Maine prior to coming to the State **in order to circulate** petitions in this initiative." (Fairfield Aff. ¶ 2). Where the Secretary had no evidence that the company hiring circulators encouraged these five individuals to come to Maine, and given the evidence which surfaced at the hearing regarding the individuals' ties to this State, this Court suggests that the Secretary's decision regarding residency was made without a thorough investigation.

circulators were not residents of the State of Maine is **VACATED** and the matter is remanded to the Secretary of State for further factual findings consistent with the evidence adduced at the "trial" before this Court and any additional evidence introduced in proceedings before the agency. As to the remaining counts of the complaint wherein petitioners ask this Court to declare Me. Con. Art. 4, Pt. 3 § 20 unconstitutional, judgment is entered for the respondent.

Dated: Friday, May 15, 1998

/s/
Margaret J. Kravchuk, Justice
Superior Court

Attorneys for Petitioners:

James T. Kilbreth, Esq.
William C. Knowles, Esq.
Verrill & Dana, LLP
One Portland Square
P.O. Box 586
Portland, ME 04112

Attorneys for Respondent:

Andrew Ketterer, Attorney General
Phyllis Gardiner, Asst. Attorney General
Andrew S. Hagler, Asst. Attorney General
Six State House Station
Augusta, Maine 04333

APPENDIX C - ORDER OF THE KENNEBEC COUNTY SUPERIOR COURT, DATED JUNE 29, 1998

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
DOCKET NO. AP-98-30

STEPHANIE HART and MAINERS FOR MEDICAL RIGHTS,	)	
Plaintiffs	)	
v.	)	ORDER ON APPEAL
DANIEL A. GWADOSKY, in his capacity as Secretary of State for the State of Maine,	)	
Defendant	)	

Pursuant to the Order of this Court dated May 15, 1998, the Secretary of State has issued an amended determination of the validity of a petition for initiated legislation entitled "An Act to Permit the Medical Use of Marijuana". Upon remand the

Secretary of State was ordered to incorporate additional evidence, including the testimony presented at a hearing before this Court, and to make further factual findings regarding the residency status of five petition circulators. On June 23, 1998, the Secretary of State filed with this Court his amended findings wherein he concluded that two of the five challenged circulators were indeed residents of Maine and the other three were nonresidents.

Pursuant to the Order of the Chief Justice of the Supreme Judicial Court, Sitting as the Law Court, dated May 28, 1998, staying the appeal of this Court's May 15th Order, the petitioners have an opportunity to seek judicial review of the Secretary's June 23rd amended findings. Pursuant to their Motion for Judicial Review, dated June 25, 1998, petitioners have sought such judicial review. Both

the petitioners and the Secretary agree that further oral argument or memoranda of law would appear to be redundant as the issue regarding residency was previously thoroughly briefed and argued.

Upon remand the Secretary of State concluded that Rebecca Avrett, Devon Salisbury, and Alfred Thompson were not residents of the State of Maine at the time they circulated petitions. In making his determination the Secretary relied upon the factors relevant to a determination of residency as set forth in 21-A M.R.S.A. § 112(1) (Supp. 1997). The Secretary's decisions regarding Devon Salisbury and Alfred Thompson are so clearly supported by evidence in the record that they do not merit comment. The decision concerning Rebecca Avrett's residence is one about which reasonable minds might differ, but the Secretary's determination

is clearly based upon evidence in the record, including "objective facts" which the Secretary gave greater weight than the testimony of Ms. Avrett. His decision to do so was not arbitrary, capricious, nor lacking in evidentiary basis.

Based on the foregoing, entry will be:

The Secretary of State's decision dated June 23, 1998, amending paragraph 2(D) of the decision issued on March 31, 1998, is AFFIRMED and 347 signatures are found to be invalid because the circulators were not residents of the State of Maine.

Dated: June 29, 1998

/s/
JUSTICE
SUPERIOR COURT

Supreme Court, U.S.
FILED
JAN 6 1999
OFFICE OF THE CLERK

No. 98-676

In The

Supreme Court of the United States

October Term, 1998

STEPHANIE HART, *et al.*,

Petitioners,

v.

DAN A. GWADOSKY,

Respondent.

On Petition For A Writ Of Certiorari To The Maine Supreme Judicial Court

RESPONDENT'S BRIEF IN OPPOSITION

ANDREW KETTERER
Maine Attorney General

PAUL STERN
Deputy Attorney General

PETER J. BRANN
State Solicitor
(*Counsel of Record*)

ANDREW S. HAGLER
PHYLLIS GARDINER
Assistant Attorneys General

Six State House Station
Augusta, Maine 04333
(207) 626-8800

Attorneys for Respondent

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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RESPONDENT'S BRIEF IN OPPOSITION

The respondent, Dan A. Gwadosky, Maine's Secretary of State ("Secretary"), respectfully requests that the Court deny the petition for a writ of certiorari seeking review of the decision and judgment of the Maine Supreme Judicial Court, sitting as the Law Court ("Law Court"), issued on July 28, 1998, reproduced in the Appendix to the Petition for a Writ of Certiorari ("Pet. App.") at Pet. App. 1a-15a, and reported in *Hart v. Secretary of State*, 715 A.2d 169 (Me. 1998).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the constitutional and statutory provisions cited by the petitioners, the following constitutional and statutory provisions are implicated by this lawsuit and are reproduced in the attached Respondent's Appendix ("Resp. App."): Me. Const. art. IV, pt. 3, § 18 (Resp. App. 1a-2a); Me. Const. art. IV, pt. 3, § 22 (Resp. App. 3a); and Me. Rev. Stat. Ann. tit. 21-A, § 905 (West 1993 & Supp. 1998) (Resp. App. 3a-5a).

STATEMENT OF THE CASE

The petitioners, Stephanie Hart and Mainers for Medical Rights, seek review of a decision that became moot as a result of the November 1998 election, concerning issues that the Law Court had not addressed previously in the 90 years that Maine has had citizen's initiatives. Because the conflict alleged by the petitioners

between the Law Court's decision and *Buckley v. American Constitutional Law Foundation*, No. 97-930, is illusory, the Court should not even hold this case pending the outcome of *Buckley* to issue a decision that will have no practical consequence to the parties.

In 1909, Maine amended its Constitution to provide for a citizens' initiative, whereby its citizens may initiate and pass legislation. *See* 1907 Me. Const. Resolves, ch. 121 (effective January 6, 1909) (codified as amended at Me. Const. art. IV, pt. 3, § 18; Resp. App. 1a-2a). The citizens' initiative has become an ingrained feature of Maine's political landscape, with citizens' initiatives appearing on virtually every statewide ballot in the past 25 years. Last year, the Law Court addressed for the first time a constitutional challenge concerning the twin requirements that petition circulators be Maine residents and be Maine registered voters.

The petitioners are seeking to enact by citizens' initiative a measure to legalize the use of marijuana for medical purposes in Maine. On November 24, 1997, the Secretary approved the form of the petition, which, under then existing law, gave the petitioners three years, *i.e.*, until November 24, 2000, to circulate their petitions and submit the required number of signatures. *See* Me. Rev. Stat. Ann. tit. 21-A, § 903-A (West Supp. 1998) (amended by 1997 Me. Laws ch. 637 (reducing circulation period to one year for subsequent citizens' initiatives)).

By February 24, 1998, *i.e.*, three months after the Secretary approved their petition for circulation, the petitioners submitted 68,330 signatures for the Secretary's review. Under Maine's Constitution, in order to qualify a

citizens' initiative for the ballot, the proponents must submit valid signatures equivalent to "10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition." Me. Const. art. IV, pt. 3, § 18(2); Resp. App. 1a. If the measure is not adopted without change by the Legislature, it is submitted to the people as a ballot question at the next statewide election. Me. Const. art. IV, pt. 3, § 18(3); Resp. App. 2a.

At the time the petitioners filed their petition, based on the November 1994 gubernatorial election, the minimum number of valid signatures necessary to qualify a citizens' initiative measure for the ballot was 51,131. The Secretary found that 21,821 of the signatures submitted to him were invalid, and, since the remaining 46,509 signatures fell below the threshold of 51,131 valid signatures, he declined to qualify the measure for the November 1998 ballot.

The petitioners then filed suit in Maine Superior Court pursuant to Me. Rev. Stat. Ann. tit. 21-A, § 905 (West 1993 & Supp. 1998); Resp. App. 3a-5a, challenging both the factual and the legal bases of the Secretary's decision. Because the Law Court had not yet issued its decision in *Palesky v. Secretary of State*, 711 A.2d 129 (Me. 1998), establishing the procedure for resolving factual disputes concerning the validity of signatures in citizens' initiatives, the Superior Court and the Secretary, on remand, conducted further proceedings to resolve the petitioners' factual challenges. Pet. App. 4a-5a, 35a-39a. Although these proceedings delayed the outcome of this matter, they ultimately were inconsequential since the petitioners abandoned their factual challenges on appeal to the Law Court. *See* Appellants' Brief at 5 n.1.

The petitioners challenged the constitutionality of the requirement that the petition circulators be Maine residents, which had resulted in the invalidation of 347 signatures, and the requirement that the petition circulators be Maine registered voters, which had resulted in the invalidation of 4,347 signatures. The Superior Court rejected both challenges, Pet. App. 18a-35a, and, on appeal to the Law Court, the petitioners conceded that "Petitioners must strike down *both* the residency and the voter registration requirements to qualify for the November 1998 ballot." Appellants' Brief at 5 n.1 (emphasis added).

The Law Court reached only the issue of residency, holding that this requirement did not offend the first amendment. Pet. App. 5a-14a. The Court specifically declined to reach petitioners' challenge to the registration requirement, noting that "[b]ecause the number of signatures invalidated on the basis of the circulator's residence alone would prevent the initiative from being placed on the November 1998 ballot, we affirm the judgment without ruling on the voter registration requirement." Pet. App. 2a.

Less than two weeks after the petitioners filed their Petition for a Writ of Certiorari ("Petition"), Maine held its November 1998 gubernatorial election. Fewer persons cast votes in that election than in the previous gubernatorial election held in 1994. Accordingly, the minimum number of petition signatures necessary to qualify an initiative measure for the ballot is now 42,101, *i.e.*, 9,030 less than the number of valid signatures previously required, and, more importantly, 4,408 less than the

number of valid signatures previously submitted by the petitioners. Resp. App. 9a.

On November 24, 1998, the petitioners again submitted their petition for the Secretary's review. Resp. App. 6a-8a. The petitioners resubmitted the 46,509 signatures that the Secretary had previously found to be valid, along with new petitions containing an additional 1,024 signatures. Resp. App. 9a. On December 23, 1998, the Secretary issued his determination that, in light of the newer lower threshold of 42,101 valid signatures, without even considering the signatures invalidated on the grounds of residency or registration, the petitioners had submitted sufficient valid signatures to have the petitioners' initiative placed on the November 1999 ballot. Resp. App. 9a-11a. The petitioners, therefore, seek review of two legal issues of no consequence to them, one of which was never addressed by Maine's highest court.

REASONS FOR DENYING THE WRIT

I. THE PETITIONERS' CHALLENGE IS MOOT AND IS OF NO RECURRING LEGAL SIGNIFICANCE TO THE PETITIONERS.

Regardless of the outcome of the petitioners' constitutional challenges, the petitioners have now succeeded in their stated aim to place their initiative on either the November 1998 or the November 1999 ballot. *See* Appellants' Brief at 5; Petition at 11-12 n.1, 15 n.2. The petitioners submitted 46,509 valid signatures by February 24, 1998, which was less than 10% of the ballots cast in the November 1994 election, but more than 10% of the ballots

cast in the November 1998 election. The petitioners' initiative therefore qualifies to be on the November 1999 ballot. The petitioners thus seek an advisory opinion from the Court on the constitutionality of Maine's requirements that circulators of citizens' initiatives be Maine residents and be Maine registered voters.

The petitioners assert in passing that this case is not moot for two reasons. Petition at 11-12 n.1. First, the petitioners contend that if they prevail on either or both of their constitutional challenges, it "would either qualify Petitioners' citizens' initiative for the November 1999 ballot or reduce the number of additional signatures that they would need to collect to qualify for that ballot." Petition at 12 n.1. This argument, however, only underscores the mootness of this challenge since the petitioners' citizens' initiative will now be on the November 1999 ballot without regard to the petitioners' constitutional challenges.

Second, the petitioners contend that this case "falls squarely" within the "capable of repetition yet evading review" exception to the mootness doctrine articulated in *Murphy v. Hunt*, 455 U.S. 478 (1982). *See* Petition at 12 n.1. The petitioners misquote the standard, which provides that, to fall within the exception, "there must be a 'reasonable expectation' or a 'demonstrated probability' that the same controversy will recur *involving the same complaining party.*" *Murphy v. Hunt*, 455 U.S. at 482 (emphasis added to show portion excised by the petitioners). Since the petitioners' citizens' initiative will be on the November 1999 ballot in light of the Secretary's recent decision on their resubmitted signatures, the petitioners are certainly incorrect when they argue that "[l]acking action by

the Court, Petitioners will face the same First Amendment harm when they attempt to place their petition on the November 1999 ballot." Petition at 12 n.1 (citation omitted).

This also is not the sort of a dispute that is so evanescent that it necessarily evades review by this Court. Under both the Maine Constitution and Maine statutes, the Secretary is required to review all petitions on an expedited basis, and the courts are required to resolve all judicial challenges on an expedited basis. *See* Me. Const. art. IV, pt. 3, § 22 (Resp. App. 3a); Me. Rev. Stat. Ann. tit. 21-A, § 905 (West 1993 & Supp. 1998) (Resp. App. 3a-5a). The petitioners filed their challenge on April 7, 1998, and, even with the additional proceedings necessitated by their ultimately abandoned factual challenges (and now unnecessary in light of the Law Court's decision in *Palesky v. Secretary of State*, 711 A.2d 129 (Me. 1998)), obtained a decision from Maine's highest court on July 28, 1998. If these constitutional questions ever arise again, it certainly is reasonable to believe that in light of these expedited procedures, the complaining party could seek and obtain review from the Court well in advance of an election.

Furthermore, a citizens' initiative can appear on the ballot in any November statewide election. Me. Const. art IV, pt. 3, § 18(3); Resp. App. 2a. This contrasts with a candidate's need to appear on the ballot in a particular election for a public office that is filled only periodically. Thus, if and when the Court reviews a live controversy concerning the constitutionality of Maine's residence and voter registration requirements, it can provide effective relief to the complaining party who seeks to place a

citizens' initiative on the ballot. The Court need not resolve these constitutional issues in the abstract at the urging of a party for whom this controversy is of no continuing consequence.

II. THE LAW COURT CORRECTLY REJECTED THE PETITIONERS' CHALLENGE ON GROUNDS THAT DO NOT CONFLICT WITH OTHER COURTS.

The petitioners' primary argument is that the Court should grant review because the decision below conflicts with decisions from the Eighth Circuit and the Tenth Circuit invalidating voter registration requirements for circulators of citizens' initiatives. *See* Petition at 14-19 (citing *Bernbeck v. Moore*, 126 F.3d 1114 (8th Cir. 1997); *American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d 1092 (10th Cir. 1997), *cert. granted sub nom. Buckley v. American Constitutional Law Foundation, Inc.*, 118 S. Ct. 1033 (1998), and *cert. denied*, 118 S. Ct. 1045 (1998)). This conflict is entirely illusory since the Law Court made plain it was not ruling on the petitioners' constitutional challenge to the voter registration requirement: "Because the number of signatures invalidated on the basis of the circulator's residence alone would prevent the initiative from being placed on the November 1998 ballot, we affirm the judgment without ruling on the voter registration requirement." Pet. App. 2a.

The petitioners attempt to surmount this obstacle by claiming in passing that although the Law Court expressly stated it was not ruling on the voter registration requirement, it nevertheless did so because it affirmed

the Superior Court's "order and decision * * * in all respects." Petition at 15 n.2. This argument is belied by the unequivocal language of the Law Court's decision quoted above.

Additionally, the Law Court did only what it was asked to do by the petitioners. In the conclusion to their brief in the Law Court, the petitioners only sought reversal of the Secretary's decision (not the Superior Court's "order and decision") declining to place their initiative on the November 1998 ballot. *See* Appellants' Brief at 21. Furthermore, the petitioners virtually invited the Law Court to consider only one of their constitutional challenges with their concession that "Petitioners must strike down *both* the residency and the voter registration requirements to qualify for the November 1998 ballot." Appellants' Brief at 5 n.1 (emphasis added). The petitioners should not be heard to complain about the Law Court's refusal to reach their constitutional challenge to the voter registration requirement, and the Law Court should be taken at its word that it was unnecessary to do so. There is no conflict between the decision below and the Eighth and Tenth Circuit decisions on the voter registration requirement.

The Law Court did determine that it was constitutional to require that circulators of citizens' initiatives be, in fact, citizens of the State of Maine. Pet. App. 5a-14a. The petitioners argue that this decision conflicts with a district court's implicit rejection of a residency requirement for circulators. *See* Petition at 28 (citing *Term Limits Leadership, Inc. v. Clark*, 984 F. Supp. 470, 475 (S.D. Miss. 1997)). Suffice it to say, this Court does not review alleged conflicts between a decision of the highest court of a State

and the *dicta* of a lower federal court. *See* R. Stern, E. Gressman, S. Shapiro & K. Geller, *Supreme Court Practice*, § 4.8 (7th ed. 1993). Indeed, although numerous states have citizens' initiative procedures, the petitioners do not cite – and we are not aware – of any cases concerning the constitutionality of a residency requirement, which further militates against Court review of the decision below. *Cf. American Constitutional Law Foundation, Inc. v. Meyer*, 120 F.3d at 1100 (assuming, but not deciding, that "the state's potentially compelling interest in preserving the integrity of its elections requires all circulators to be residents," although concluding that the registration requirement was not narrowly tailored to achieve this interest).

The petitioners not only seek review of a constitutional issue upon which no other court has yet opined, but they seek review of a decision that is manifestly correct. In reserving for themselves the sovereign power to enact legislation by initiative, the citizens of Maine were careful to reserve for themselves the right to participate in this unique legislative process:

> In short, the sovereign which is the people, has taken back, subject to the terms and limitations of the amendment, a power vested in the Legislature when Maine became a state.

Farris v. Goss, 143 Me. 227, 231, 60 A.2d 908, 910 (1948). Thus, only residents of the State may propose measures by initiative, circulate and sign petitions in an effort to place them on the ballot, and vote to enact them as law. Me. Const. art IV, pt. 3, § 20.

The Law Court correctly held that Maine's interest in preserving, for members of its own political community, the power to engage in this retained sovereign power to legislate is compelling, and that the residency requirement is narrowly tailored to advance this interest. Even the petitioners recognize the importance of local citizen participation (or the appearance of such participation) in the citizen's initiative process by calling their group "Mainers for Medical Rights." The Law Court's conclusion that the residency requirement also advances the states's compelling interest in ensuring the integrity of the initiative process was also correct. There simply is no pressing national need for the Court to review this decision, or even to hold this case pending the outcome of *Buckley v. American Constitutional Law Foundation*, No. 97-930.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

January 6, 1998

Respectfully submitted,

ANDREW KETTERER
Maine Attorney General

PAUL STERN
Deputy Attorney General

PETER J. BRANN
State Solicitor
(Counsel of Record)

ANDREW S. HAGLER
PHYLLIS GARDINER
Assistant Attorneys General

Six State House Station
Augusta, Maine 04333
(207) 626-8800

Attorneys for Respondent

RESPONDENT'S APPENDIX

§ 18. Direct initiative of legislation; number of signatures necessary on direct initiative petitions; dating signatures on petitions; competing measures; proclamation by Governor

Section 18. Direct initiative of legislation.

1. Petition procedure. The electors may propose to the Legislature for its consideration any bill, resolve or resolution, including bills to amend or repeal emergency legislation but not an amendment of the State Constitution, by written petition addressed to the Legislature or to either branch thereof and filed in the office of the Secretary of State by the hour of 5:00 p.m., on or before the 50th day after the date of convening of the Legislature in first regular session or on or before the 25th day after the date of convening of the Legislature in second regular session. If the 50th or 25th day, whichever applies, is a Saturday, Sunday, or legal holiday, the period runs until the hour of 5:00 p.m., of the next day which is not a Saturday, Sunday, or legal holiday.

2. Referral to electors unless enacted by the Legislature without change; number of signatures necessary on direct initiative petitions; dating signatures on petitions; competing measures. For any measure thus proposed by electors, the number of signatures shall not be less than 10% of the total vote for Governor cast in the last gubernatorial election preceding the filing of such petition. The date each signature was made shall be written next to the signature on the petition, and no signature older than one year from the written date on the petition shall be valid. The measure thus proposed, unless enacted without change by the Legislature at the session at which it is presented, shall be submitted to the electors together with

any amended form, substitute, or recommendation of the Legislature, and in such manner that the people can choose between the competing measures or reject both. When there are competing bills and neither receives a majority of the votes given for or against both, the one receiving the most votes shall at the next statewide election to be held not less than 60 days after the first vote thereon be submitted by itself if it receives more than 1/3 of the votes given for and against both. If the measure initiated is enacted by the Legislature without change, it shall not go to a referendum vote unless in pursuance of a demand made in accordance with the preceding section. The Legislature may order a special election on any measure that is subject to a vote of the people.

3. Timing of elections; proclamation by Governor. The Governor shall, by proclamation, order any measure proposed to the Legislature as herein provided, and not enacted by the Legislature without change, referred to the people at an election to be held in November of the year in which the petition is filed. If the Governor fails to order a measure proposed to the Legislature and not enacted without change to be submitted to the people at such an election by proclamation within 10 days after the recess of the Legislature to which the measure was proposed, the Secretary of State shall, by proclamation, order such measure to be submitted to the people at an election as requested, and such order shall be sufficient to enable the people to vote.

Me. Const. art IV, pt. 3, § 18

§ 22. Election officers and officials, how governed

Section 22. Until the Legislature shall enact further laws not inconsistent with the Constitution for applying the people's veto and direct initiative, the election officers and other officials shall be governed by the provisions of this Constitution and of the general law supplemented by such reasonable action as may be necessary to render the preceding sections self executing. The Legislature may enact laws not inconsistent with the Constitution to establish procedures for determination of the validity of written petitions. Such laws shall include provision for judicial review of any determination, to be completed within 100 days from the date of filing of a written petition in the office of the Secretary of State.

Me. Const. art IV, pt. 3, § 22

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§ 905. Review of initiative and referendum petitions

1. Secretary of State. The Secretary of State shall review all petitions filed in the Department of the Secretary of State for a people's veto referendum under the Constitution of Maine, Article IV, Part Third, Section 17, or for a direct initiative under the Constitution of Maine, Article IV, Part Third, Section 18.

The Secretary of State shall determine the validity of the petition and issue a written decision stating the reasons for the decision within 30 days after the final date for filing the petitions in the Department of the Secretary of

State under the Constitution of Maine, Article IV, Part Third, Section 17 or 18.

2. **Superior Court.** Any voter named in the application under section 901, or any person who has validly signed the petitions, if these petitions are determined to be invalid, or any other voter, if these petitions are determined to be valid, may appeal the decision of the Secretary of State by commencing an action in the Superior Court. This action shall be conducted in accordance with the Maine Rules of Civil Procedure, Rule 80C, except as modified by this section. In reviewing the decision of the Secretary of State, the court shall determine whether the description of the subject matter is understandable to a reasonable voter reading the question for the first time and will not mislead a reasonable voter who understands the proposed legislation into voting contrary to his wishes. This action must be commenced within 5 days of the date of the decision of the Secretary of State and shall be tried, without a jury, within 15 days of the date of that decision. Upon timely application, anyone may intervene in this action when the applicant claims an interest relating to the subject matter of the petitions, unless the applicant's interest is adequately represented by existing parties. The court shall issue its written decision containing its findings of fact and stating the reasons for its decision within 30 days of the commencement of the trial or within 45 days of the date of the decision of the Secretary of State, if there is no trial.

3. **Supreme Judicial Court.** Any aggrieved party may appeal the decision of the Superior Court, on questions of law, by filing a notice of appeal within 3 days of that decision. The appellant must file the required number of copies of the record with the clerk within 3

days after filing notice of appeal. After a notice of appeal is filed, the parties have 10 days to file briefs with the clerk of courts. As soon as the record and briefs have been filed, the court shall immediately consider the case. The standard of review shall be the same as for the Superior Court. The court shall issue its decision within 30 days of the date of the decision of the Superior Court.

Me. Rev. Stat. Ann. tit. 21-A, § 905 (West 1993 & Supp. 1997)

VERRILL & DANA LLP
ATTORNEYS AT LAW

CHRISTIOPHER B. McLAUGHLIN
Email: cbm@verdan.com

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499

November 23, 1998

(Via ~~Hand Delivery~~ [Federal Express])

Ms. Julie Flynn
Secretary of State's Office
148 State House Station
Augusta, ME 04333-0148

Re: Submission of Citizens' Initiative Petition

Dear Julie:

Stephanie Hart and Mainers for Medical Rights hereby submit their citizens' initiative petition entitled, "AN ACT to Permit the Medical Use of Marijuana," for a determination of its validity by the Secretary of State.

As we have discussed previously, I request that the Secretary of State include in his review all signatures in support of this citizens' initiative petition submitted by its sponsors in January and February of 1998. Secretary Gwadosky's Amended Determination of Validity, issued June 23, 1998, indicates that Ms. Hart and Mainers for Medical Rights submitted 4,622 fewer signatures than the required minimum of 51,131. Accordingly, Ms. Hart and Mainer for Medical Rights should be credited with 46,509 verified signatures previously submitted in support of their citizens' initiative petition. I ask that you add to this total the 915 verified signatures collected by the sponsors over the past several weeks. The collection sheets for

these new signatures, properly notarized and signed by the local registrars, are enclosed with this mailing. The newly collected signatures break down as follows:

Signatures	Township
546	Presque Isle
73	Caribou
296	Various other towns in Aroostook County

915 Additional Verified Signatures

Also enclosed are proofs of voter registration for three circulators, Charles Gale, Tom Murray and Christopher Little, as well as seven signature sheets on which the local registrants appear to have made errors during the verification process.

Because the Secretary of State did not authorize Ms. Hart and Mainers for Medical Rights to begin the collection of signatures until November 21, 1997, I believe that few, if any, signatures will be effected [sic] by the one-year expiration period. It is my understanding from previous discussions with you and with the Attorney General's Office that this letter, representing a formal resubmission of Ms. Hart's citizens' initiative petition, will toll the one-year expiration period and prevent any additional signatures from becoming invalid. I therefore calculate that Ms. Hart and Mainers for Medical Rights will have submitted approximately 47,424 verified signatures in support of their citizens' initiative petition. It appears that this will be sufficient to satisfy the new signature requirement, although I understand that the Secretary of

State's Office has yet to issue official voting statistics for the 1998 gubernatorial election.

If you have any questions or concerns regarding this letter or the submission of Ms. Hart's citizens' initiative petition, please feel free to contact me at the above number. I appreciate the continued assistance from you and our office with this matter.

Sincerely,

/s/ Christopher B. McLaughlin
Christopher B. McLaughlin

CBM:d
Enclosures
cc: Mr. David Fratello
Ms. Stephanie Hart
Phyllis Gardner, Esq.
James T. Kilbreth, Esq.

STATE OF MAINE
OFFICE OF THE SECRETARY OF STATE

DETERMINATION OF THE VALIDITY OF A PETITION FOR INITIATED LEGISLATION ENTITLED:

"An Act to Permit the Medical Use of Marijuana"

1. On November 24, 1998, petitioners resubmitted to the Secretary of State for review, pursuant to the Constitution of Maine, Article IV, Part Third, Section 18, petitions containing 68,330 signatures which were already on file, plus new petitions containing an additional 1,024 signatures, for a combined total of 69,354 signatures, on behalf of the initiated legislation entitled, "An Act to Permit the Medical Use of Marijuana."

2. The number of valid signatures required for an initiative petition to qualify for submission to the Legislature pursuant to the Constitution of Maine, Article IV, Part Third, Section 18, is 10% of the total vote cast for Governor in the most recent gubernatorial election preceding this filing. That election occurred on November 3, 1998, and the qualifying number is now 42,101 signatures. Although, as petitioners requested, I have based this determination of validity on a review of all of the signatures submitted (both newly submitted and previously filed), it is clear that petitioners already had in excess of the minimum number of signatures to qualify under the new threshold, without submitting any additional signatures for review.

3. Based upon a consolidated review of the petitions which were previously submitted, and the additional petitions submitted for the first time on November 24,

1998, I find these signatures to be invalid for the following reasons:

A. 16,568 are invalid because they were not certified by the registrars as belonging to a registered voter in that municipality.

B. 2,677 signatures are invalid because the circulators collected signatures prior to becoming registered to vote in the State of Maine.

C. 1,502 signatures are invalid because the circulators were not registered to vote in the State of Maine.

D. 733 signatures are invalid because the were collected by three circulators (Rebecca Avrett, Devon Salisbury and Alfred Thompson) who were not residents of the State of Maine. (Many of these also were found invalid for other reasons as noted in the previous determination of validity.)

E. 106 signatures are invalid because they are duplicate signatures already counted.

F. 88 signatures are invalid because the petitioner dated his or her signature after the date of the circulator's oath before the notary.

G. 44 signatures are invalid due to counting errors by the registrar.

H. 48 signatures are invalid because they do not appear to have been made by the persons they purported to be.

I. 39 signatures are invalid because of material alterations to the petition.

J. 36 signatures are invalid because the circulator's verification was incomplete.

K. 32 signatures are invalid because the certification of the registrar was not completed.

L. 8 names are invalid because the petitioners failed to sign their name.

M. 6 signatures are invalid because the petitions were circulated prior to the approval by the Secretary of State.

N. 5 signatures are invalid because the person whose name appears on the petition did not sign the petition.

O. 16 signatures are invalid because the petitioner's signature was dated more than one year before the date the petition was filed.

4. For the reasons set forth above, I find that a total of 21,948 signatures are invalid. Petitioners have therefore submitted a combined total of 47,406 valid signatures. As noted in paragraph 2 above, the minimum number of signatures required for validity is now 42,101. Because the number of valid signatures exceeds the minimum required number by 5,305 signatures, I find the petition to be valid.

Dated: December 23, 1998 /s/ Dan A. Gwadosky
Dan A. Gwadosky
Secretary of State